

RECEIVED
U. S. DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Washington, D. C.

Washington Court of Appeals

October Term 1944

No. 680

United States, et al

Capital Transit Company, et al

APPLICATION OF APPELLANT,
WASHINGTON, VIRGINIA & MARYLAND COACH
COMPANY FOR MODIFICATION OF OPINION

J. WENDELL BAILY,

Attorney for

Washington, Virginia & Maryland
Coach Company.

June 15, 1945.

IN THE
Supreme Court of The United States

October Term 1944

No. 663

UNITED STATES, et al

v.

CAPITAL TRANSIT COMPANY, et al

**PETITION OF APPELLEE,
WASHINGTON, VIRGINIA & MARYLAND COACH
COMPANY FOR MODIFICATION OF OPINION**

*To the Honorable, the Chief Justice and Associate
Justices of the Supreme Court of the United States:*

The petition of Washington, Virginia & Maryland Coach Company respectfully represents:

Your Honorable Court, by its opinion filed May 28, 1945, in the above-entitled case, misconceived certain fundamental facts. If the mandate should issue to the court below to vacate its decree, enjoining the order of the

Interstate Commerce Commission, such mandate would, of course, have the effect of reestablishing the order of the Interstate Commerce Commission in its entirety. We do not find from a reading of the opinion of this Honorable Court that such a result was intended.

Point I

The opinion of this Court rationalizes the order of the Commission, establishing joint fares between the street railway system of the Capital Transit Company and the bps system of the Capital Transit Company, on the basis of an established course of conduct by the Capital Transit Company. There is no record whatever to support the proposition that there was any conduct on the part of the Washington, Virginia & Maryland Coach Company upon which either this Court or the Interstate Commerce Commission could rationalize an order for joint fares. In the absence of a course of conduct on the part of the parties, which conduct would subject them to the jurisdiction of the Commission, the order of the Commission requiring joint fares between the Capital Transit Company and the Washington, Virginia & Maryland Coach Company, is in the teeth of Section 216(a) of Part II of the Interstate Commerce Act, for the reason that the Capital Transit Company is not a "like common carrier" with the Washington, Virginia & Maryland Coach Company.

Point II

It is not clear whether this Court, by its opinion, intended to confer permanent jurisdiction on the Commission to enforce its order, or merely found that the Commission's power arose out of the war emergency and in which event, such power would cease to exist upon the termination of the war emergency.

Wherefore, petitioner respectfully requests that the Court modify its opinion and clarify it in the respects indicated, before mandate issues.

Respectfully submitted,

J. NINIAN BEALL

*Attorney for
Washington, Virginia & Maryland
Coach Company.*

June 15, 1945.

Certificate of Counsel

I hereby certify that I am counsel for the appellee and petitioner in the foregoing petition, that the same is presented in good faith and not for delay.

J. NINIAN BEALL